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No.

IN THE

SUPREME COURT OF THE UNITED STATES

Patrick James Knowlton,

Petitioner

v.

Russell T. Bransford, et al.

On Petition For Writ Of Certiorari
To the United States Court of Appeals
For The District of Colombia Circuit

PETITION FOR WRIT OF CERTIORARI

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37pp

QUESTIONS PRESENTED

1. This cause – involving whether a grand jury witness subpoenaed to testify about the death of deputy White House Vincent Foster suffered tampering in violation of 42 U.S.C. 1985(2), a statute designed to protect the integrity and sanctity of the federal court system – raises issues of imperative importance to the public. Was the district court's granting of pre-discovery summary judgment, denial of leave to amend, and the United States Court of Appeals' summary affirmance, error?

2. Where a 42 U.S.C. § 1985(2) violation could be reasonably foreseen as a necessary or natural consequence of an overarching conspiracy to obstruct justice, must plaintiff name principles in the § 1985(2) violation to hold members of its overarching conspiracy liable?

3. In holding that plaintiff had failed to fairly raise the inference of conspiratorial agreement, did the district court err by drawing all inferences in favor of the moving parties?

PARTIES TO THE PROCEEDINGS

Petitioner

Patrick James Knowlton

Respondents

Ayman Alouri

Russell T. Bransford

Lawrence Monroe

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OPINIONS BELOW

The September 9, 1999, Memorandum opinion of the United States District Court for the District of Columbia is set forth in the Appendix filed herewith at 269. The District Court:

- Denied plaintiff the opportunity to conduct any discovery
- Denied plaintiff leave to amend his Complaint
- Granted all defendants' summary judgment motions

On November 29, 1999, the District Court denied plaintiff's motion to alter or amend the Court's judgment.

On June 27, 2000, the United States Court of Appeals for the District of Columbia Circuit ruled that the case presented no substantial question and granted all defendants further summary relief by summary affirmance. On September 13, 2000, the United States Court of Appeals denied Petitioner's petition for a hearing and petition for hearing *en banc*, at 299 & 301 of Appendix).

JURISDICTION

The United States Court of Appeals for the District of Columbia Circuit entered its Order granting summary affirmance on June 27, 2000. On July 27, 2000, Petitioner filed a timely Petition for Hearing and Suggestion for Hearing *En Banc*. On September 13, 2000, the United States Court of Appeals denied the rehearing petition. This Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition for Hearing. This Court's jurisdiction is sought under 28 U.S.C. § 2101(c).

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1985. *Conspiracy to interfere with civil rights* Part (2), *Obstructing justice; intimidating party, witness, or juror":*

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or

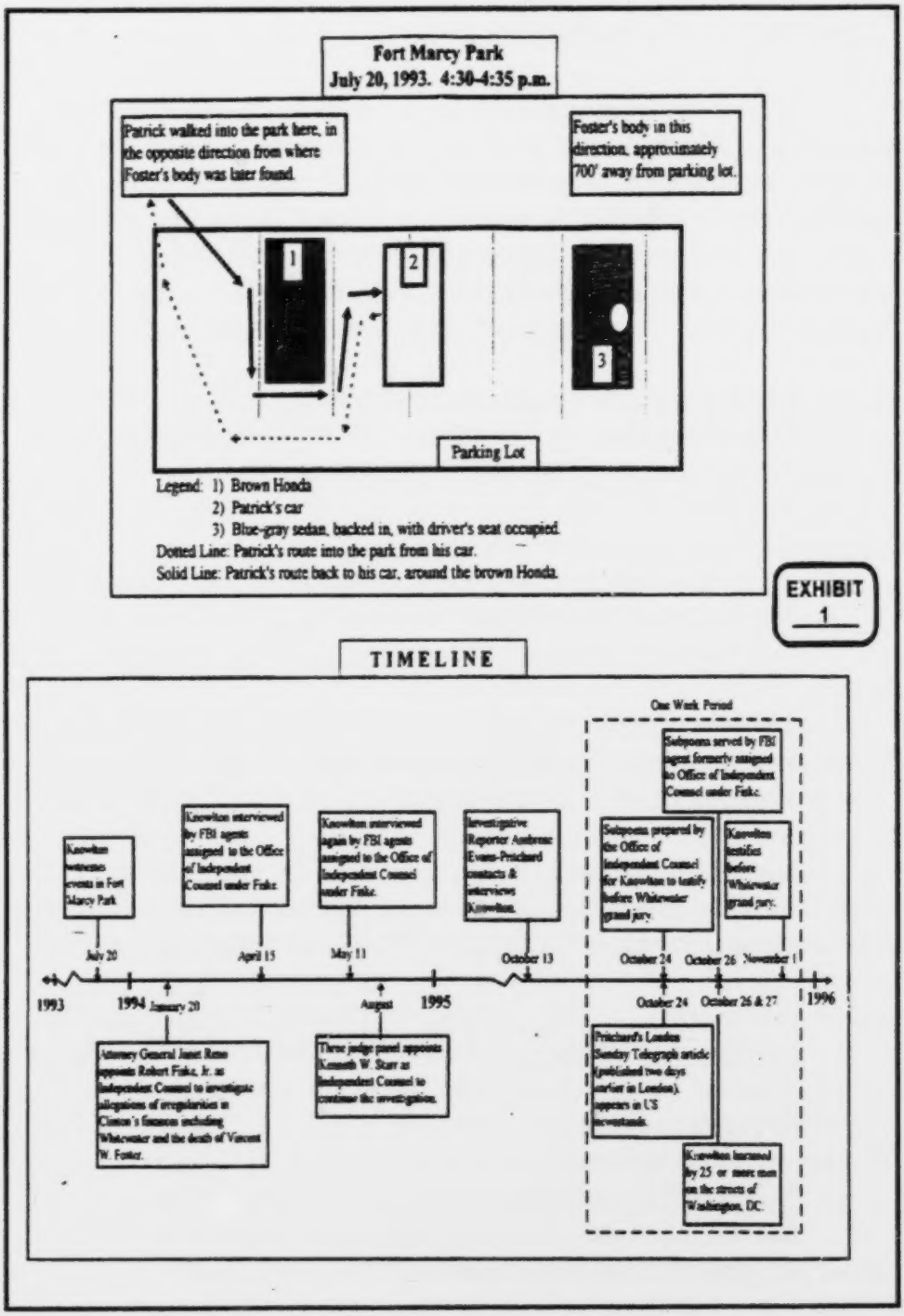
from testifying to any matter pending therein, freely, fully, and truthfully…

STATEMENT OF THE CASE

Petitioner Whitewater grand jury witness Patrick Knowlton sued under 42 U.S.C. 1985(2) for witness tampering that began October 26, 1995, the very day that the FBI subpoenaed him to testify about the death of deputy White House Counsel Vincent Foster. The Independent Counsel had prepared Knowlton's subpoena two days earlier – October 24, 1995 – the very day that the London Sunday Telegraph appeared in U.S. newsstands.

> London Sunday Telegraph, *Death in the Park: Is this the killer?* subtitled, *Foster mystery: a key witness ignored by the FBI reveals the face*. October 22, 1995, Ambrose Evans-Pritchard:
>
> When the *Sunday Telegraph* showed him police judicial summaries of his testimony -- which he had not seen -- he was stunned, saying his statements have been falsified...
>
> The other [car in the lot] was a blue sedan... [A] man in his twenties sitting inside it with a manicured appearance... lowered his window and gave Knowlton a threatening look...
>
> His FBI statement says that Knowlton "could not further identify this individual and stated that he would be unable to recognize him in the future." "That's an outright lie," he said, angrily... The sketch above was drawn by an experienced police artist... "They went over it about 20 times, telling me that this was Foster's car," said Knowlton. "But I was quite adamant about it. I saw what I saw, and I wasn't going to change my story."…
>
> Starr's investigators have never talked to Knowlton. The federal grand jury has never summoned him to give sworn testimony... (emphasis supplied)

Exhibit 1 of 5 the court-ordered OIC Appendix summarizes the facts of this case.


Fort Marcy Park
July 20, 1993. 4:30-4:35 p.m.
Patrick walked into the park here, in the opposite direction from where Foster's body was later found.
Foster's body in this direction, approximately 700' away from parking lot.
1
2
3
Parking Lot
Legend: 1) Brown Honda
2) Patrick's car
3) Blue-gray sedan, backed in, with driver's seat occupied.
Dotted Line: Patrick's route into the park from his car.
Solid Line: Patrick's route back to his car, around the brown Honda.
EXHIBIT
1
TIMELINE
One Week Period
Kaufman witnesses events in Fort Marcy Park
July 20
Kaufman interviewed by FBI agents assigned to the Office of Independent Counsel under Fiske.
April 15
Kaufman interviewed again by FBI agents assigned to the Office of Independent Counsel under Fiske.
May 11
Investigative Reporter Ambrose Evans-Pritchard contacts & interviews Kaufman.
October 13
Subpoena served by FBI agent formerly assigned to Office of Independent Counsel under Fiske.
Subpoena prepared by the Office of Independent Counsel for Kaufman to testify before Whitewater grand jury.
October 24
Kaufman testifies before Whitewater grand jury.
October 26
November 1
1993
1994
January 20
August
1995
October 24
October 26 & 27
1996
Attorney General Janet Reno appoints Robert Fiske, Jr. as Independent Counsel to investigate allegations of irregularities in Clinton's finances including Whitewater and the death of Vincent W. Foster.
Three judge panel appoints Kenneth W. Starr as Independent Counsel to continue the investigation.
Pritchard's London Sunday Telegraph article (published two days earlier in London) appears in US newsstands.
Kaufman harassed by 25 or more men on the streets of Washington, DC.

BEST AVAILAB

Exhibit 2 of 5 the court-ordered OIC Appendix encapsulates the grand jury witness tampering that Petitioner suffered.

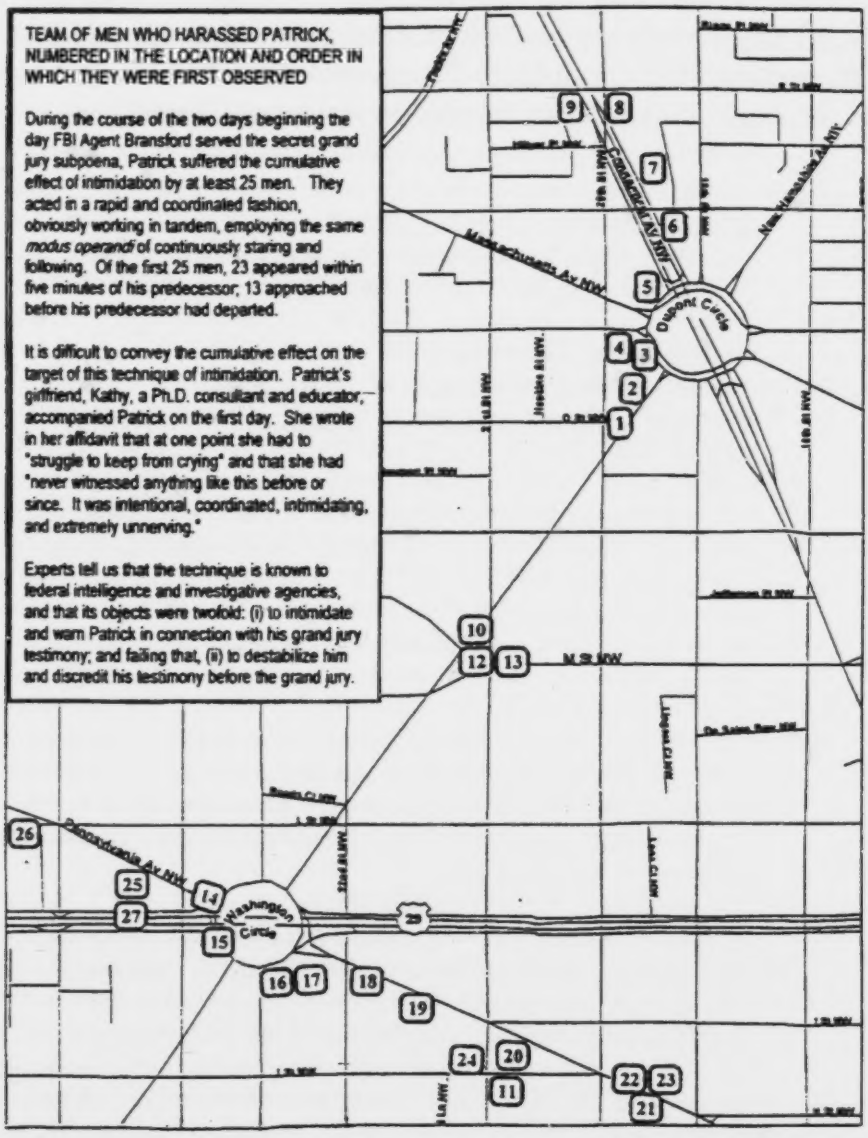

TEAM OF MEN WHO HARASSED PATRICK, NUMBERED IN THE LOCATION AND ORDER IN WHICH THEY WERE FIRST OBSERVED
During the course of the two days beginning the day FBI Agent Bransford served the secret grand jury subpoena, Patrick suffered the cumulative effect of intimidation by at least 25 men. They acted in a rapid and coordinated fashion, obviously working in tandem, employing the same modus operandi of continuously staring and following. Of the first 25 men, 23 appeared within five minutes of his predecessor; 13 approached before his predecessor had departed.
It is difficult to convey the cumulative effect on the target of this technique of intimidation. Patrick's girlfriend, Kathy, a Ph.D. consultant and educator, accompanied Patrick on the first day. She wrote in her affidavit that at one point she had to "struggle to keep from crying" and that she had "never witnessed anything like this before or since. It was intentional, coordinated, intimidating, and extremely unnerving."
Experts tell us that the technique is known to federal intelligence and investigative agencies, and that its objects were twofold: (i) to intimidate and warn Patrick in connection with his grand jury testimony; and failing that, (ii) to destabilize him and discredit his testimony before the grand jury.
Connecticut Av NW
Massachusetts Av NW
Dupont Circle
M St NW
Pennsylvania Av NW
Washington Circle
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EXHIBIT 2

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The suit names (1) participants in the harassment and (2) participants in an overall or overarching conspiracy to obstruct justice into federal investigations into Mr. Foster's death. Knowlton's civil rights cause[1] asserts civil conspiracy liability: All individual[2] participants of that conspiracy[3] are vicariously liable for the section 1985(2) violation,[4] as done in furtherance of the overall conspiracy, within its scope, and reasonably foreseeable as a

---

1 Safeguard Mutual Insurance Company v. Miller, 477 F. Supp. 1, 5, (ED PA, 1979), ("Many federal courts have recognized that a cause of action for conspiracy [in civil rights cases]"); Nesmith v. Alford, 318 F.2d 110 (5th Cir. 1963), *cert. denied*, 374 U.S. 975, 84 S.Ct. 489, 11 L.Ed2d 420 (1964) ("it may be charged as the legal mechanism through which to impose liability on each and all of the defendants without regard to the person doing the particular act."); Mizzell v. North Broward Hospital District, 427 F.2d 468, 472-73 (5th Cir. 1970); Madison v. Purdy, 410 F.2d 99, 101 (5th Cir. 1969) ("[T]he act of entering into a conspiracy may render a person responsible for the acts of his co-conspirator and thus make him vulnerable to a [civil rights] damage suit."); Landrigan v. City of Warwick, 628 F.2d 736, 742 (1st Cir. 1980); ("Conspiracy is merely the mechanism by which... [the civil rights violation imposes] liability on one defendant for the acts of others performed in pursuance of the conspiracy.").

2 See Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984): "We have not found neither in case law or in the language of the statute any reason to exclude all federal officers from the meaning of "persons" in section 1985(3)... Considerable case law rejects the proposed limitation on section 1985(3) and supports our conclusion..."

3 Id. at 51: [C]onspirators must share in the general conspiratorial objectives but they need not know all the details... or possess the same motives... [A]greement may be inferred from concert of action. *** In short, plaintiffs forcefully contend that it is a sham for defendants to plead that their activities were merely innocent efforts to obtain information for law enforcement authorities... Thus, in some instances activities that might appear proper - such as interviews of demonstrators - are alleged to have been improper because they were performed with an intent to intimidate, not gather information. (citations omitted).

4 Halberstam v. Welch, 705 F.2d 472, 476, 479 (D.C. Cir. 1983): "An agreement to participate in a wrongful course of action suffices to create vicarious liability... [O]nce the conspiracy is established, all parties to it would be liable for injuries from acts pursuant to and in furtherance of the common design, even if the parties had not actively participated or benefited..."

necessary or natural consequence of the overall conspiracy.[5] Petitioner filed suit in October, 1996.[6]

The district court appeared to have agreed that Knowlton's theory of the case was legally sound,[7] but held that his evidence did not meet his burden of production on the issue of conspiratorial agreement for either (1) participants in the harassment or (2) participants in an overall or overarching conspiracy to obstruct justice into federal investigations into Mr. Foster's death.

ARGUMENT FOR GRANTING THE WRIT

42 U.S.C. § 1985(2) . In June 1997, Petitioner met his burden of production to defeat summary judgment under his section 42 U.S.C. § 1985(2) claim, with 7 exhibits. They include three affidavits by witnesses to the intimidation, the affidavit and report of a Harvard-trained psychiatrist regarding Petitioner's account of the intimidation and of Petitioner's mental stability,[8] and the sworn to

---

5 United States v. Sampol, 636 F.2d 621 (DC Cir., 1980), citing Pinkerton v. U.S., 328 U.S. at 676: "[A] conspirator can be found guilty of a substantive offense based upon acts of his coconspirator so long as the act was done in furtherance of the conspiracy, was within the scope of the unlawful project, and could be reasonably foreseen as a necessary or natural consequence of the unlawful project... the defendant will be vicariously liable... even though it was not part of the original plan."

See Amended Complaint at ¶ 11 alleging conspiracy liability: "[R]easonably foreseeable, necessary or natural consequence of the overall conspiracy to hide the facts of Mr. Foster's death, each member of that overall conspiracy is liable for Plaintiff's damages simply by virtue of his being a conspirator."

6 Knowlton v. United States et. al., Oct. 25, 1996 with motion to file under seal (two weeks before the Presidential election) granted by Chief Judge JGP, reassigned from NHJ to JGP July, 1997.

7 District Court's September 9, 1999, Memorandum Order ("Mem. Order"), Appendix K-1 at 282: "[P]laintiff alleges that Monroe is liable for subsidiary conspiracy based on his involvement in the broader conspiracy to obstruct justice, and because the subsidiary conspiracy was forseeable."

8 Affidavit of Thomas C. Goldman, Appendix F at 189-199:

reports of two experts who know of instances of this technique of witness intimidation being used, one of whom reported having used it. (Petitioner submitted his experts' reports to prove the existence of this technique of intimidation – the court viewed it solely on the issue of conspiratorial agreement – holding the collaborative effort of these men was happenstance as a matter of law.[9])

Exhibit 1: The Affidavit of Plaintiff's girlfriend (a Ph.D. consultant and educator), who witnessed the harassment of Thursday, October 26 and the morning of October 27, 1995, states in part: *"[A]t one point, I became so panic-stricken that I had to keep from crying. I have never witnessed anything like it before or since. It was intentional, coordinated, intimidating, and extremely unnerving;"*

Exhibit 2: Plaintiff's Affidavit...

Exhibit 3: The sworn to opinion of Plaintiff's polygraph examiner, Mr. Paul Minor, wherein he reported: *"deception not indicated;"*

Exhibit 4: Affidavit of the reporter who witnessed the harassment on Friday afternoon, October 27, who described it as an "*obvious attempt to intimidate."*

Exhibit 5: Mr. Gene Wheaton, a 40-year veteran investigator stated: *"[In his] opinion, the actions described in the Amended Complaint were intended to intimidate Plaintiff to try to prevent him from testifying freely, fully, and truthfully; "*

Exhibit 6: Mr. Ted L. Gunderson, a 28-year veteran of the FBI and former Senior Special Agent in Charge of the FBI's Los Angeles Division, wrote that he is familiar with the technique of intimidation Plaintiff suffered. *"This technique is used for intimidation and to prevent a witness from testifying and/or testifying truthfully and/or cooperating with officials out of fear of harm to the witness or his loved ones. I have knowledge of this tactic and know of instances when it has been used."*

Exhibit 7: The sworn-to opinion of an expert psychiatrist, who after a complete psychiatric examination of Plaintiff, including psychological testing, concluded: *"[There is] no indication of a paranoid process or of any other pathological process that would tend to undermine Mr. Knowlton's credibility in this instance."*

[9] Mem. Order, Appendix K-1 at 289:

According to his affidavit, Mr. Gunderson would also testify that the technique described by plaintiff, of which he is personally knowledgeable, is used to intimidate witnesses from testifying.

Overarching conspiracy. And plaintiff met his burden to defeat summary judgment under his conspiracy count. Of the 111 exhibits which plaintiff submitted in his June 1997, in opposition to summary judgment motions, 107 prove, *prima facie,* twenty points of conspiracy. A summary of thirteen of these twenty points is included in the Court-ordered OIC Appendix.[10] These 20 points are divided into 6 categories:

Gunderson Aff. ¶ 4(4). Neither proffered expert has any information tying any of the defendants to each other or any agreement to deprive plaintiff of his civil rights.

[10] OIC Appendix; Appendix I at 236:
Much evidence of obstruction of justice by the FBI is documented in Patrick's lawsuit in this District Court (No. 96-2467) for *inter alia,* violation of 42 U.S.C. § 1985(2), *"...Obstructing justice; intimidating... witness...":* "...(3) The FBI concealed... irregularities... during the U.S. Park Police investigation; (4) ...more than two cars in the parking lot; (5) ...deceptively omitted the fact that Foster's car keys were not found at Fort Marcy Park...; (6)...concealed that Mr. Foster's briefcase vanished from the Honda...; (8)...concealed that an automatic pistol was found in Mr. Foster's hand before the revolver...; (9) The FBI ignored forensic evidence...; (10) The wound... [and] blood... is not consistent with... a point blank shot...; (11) The FBI concealed that... a branch [was] lying across Mr. Foster's body; (12) The FBI ignored that the absence of soil on Mr. Foster's shoes is inconsistent with... to where he was... found; (13)... inconceivable for the glasses to have been thrown or bounced...; (15)...taking medication for depression but he was not; (16)...concealed ...doctor opined... Foster was not depressed; (17) The FBI falsely reported that those close... said he was deeply depressed; (20) The FBI lab reported...'suicide note' [authentic]..., but it was forged." See also attached: Exhibit 1: (i) Map of the cars in the Fort Marcy lot and Patrick's route to and from his car; & (ii) Timeline. Exhibit 2: Map depicting the harassment Patrick suffered. Exhibit 3: The FBI knew that Mrs. Foster could identify only a silver gun, so FBI agents showed her a silver gun, told her it was found in Mr. Foster's hand, and falsely reported that she identified the (black) gun found in Mr. Foster's hand as belonging to Mr. Foster. Exhibit 4: The FBI concealed that Mr. Foster's car was not in the Fort Marcy lot by the time he was dead. Exhibit 5: The FBI concealed the gunshot wound in Mr. Foster's neck by: (i) concealing the contents of the Medical Examiner's Report which states that there was a gunshot wound in Mr. Foster's neck; (ii) falsely reporting that the 35 mm photographs were unclear; (iii) concealing that Polaroid photographs vanished; and (iv) concealing that autopsy x-rays vanished.

- The initial FBI investigation
- The initial U.S. Park Police investigation
- Civilian vehicles in the Fort Marcy lot when authorities arrived
- The gun
- Other forensic evidence
- Depression

ARGUMENT 1

This cause – involving whether a grand jury witness subpoenaed to testify about the death of deputy White House Vincent Foster suffered tampering in violation of 42 U.S.C. 1985(2), a statute designed to protect the integrity and sanctity of the federal court system – raises issues of imperative importance to the public. The district court's granting of pre-discovery summary judgment, denial of leave to amend, and the United States Court of Appeals summary affirmance, was error.

A motion for summary affirmance is appropriate only where the party can readily demonstrate that the appeal raises no substantial question. Clearly, this is not such a case. Petitioner's suit is based on a statute that is designed to protect the integrity and sanctity of the federal court process, and the cause involves issues of extraordinary importance to the public.

Under the standards of Hobson v. Wilson, 737 F.2d 1, 31 (D.C. Cir. 1984), the District and the Appellate Courts should not have dismissed Petitioner's section 1985 complaint under the facts of Petitioner's pleading – this case involves fundamental rights and vital questions of public policy:

> [I]n some circumstances **plaintiffs are able to paint only with a very broad and speculative brush at the pre-discovery stage**, and that overly rigid application of the rule we articulate could lead to dismissal of meritorious claims. See 5 *C. Wright & A. Miller, Federal Practice and Procedure* 1230 (1969 & 1984 Supp.) ("The court should remember that fundamental rights and **important questions**

of public policy are involved in actions under the various civil rights statutes and should not dismiss the complaint unless it clearly is frivolous or fails to state a claim for relief.") (emphasis supplied.)

Based on its review of the very evidence filed in the district court, the Special Division of the United States Court of Appeals for the District of Columbia Circuit ordered the extraordinary remedy -- unprecedented in the history of the Ethics in Government Act -- of ordering Petitioner's 20-page submission attached to the Independent Counsel's Report on the death, including the facts giving rise to the instant litigation. Yet, the United States Court of Appeals refused to even permit Petitioner to brief his case.

Petitioner's cause involves alarming failures of our government.

- *Executive branch.* The Ethics in Government Act, designed to ensure confidence in the integrity of our government by providing investigations independent of those being investigated, was thwarted by the OIC's use of the FBI – a federal investigative agency that had twice previously closed the case as a simple suicide – presenting the conflict of interest that the Act is designed to avoid.

- *Legislative branch.* The 1994 Senate Banking Committee was the only Committee that claimed to have looked into the death, but its limited investigative jurisdiction precluded it from investigating the facts of the death. And Congress failed to reenact the Independent Counsel law, relegating the task of ensuring that justice has been done to regulatory independent counsels.

- *Press.* The press has acted mostly as a conduit for the official announcements and conclusions of the executive branch, like a public relations department.

- *Grand jury abuse.* Transplanted from England, and frequently referred to as the people's panel, the grand jury was valued as a kind of people's watchdog, and as a means of protesting abuses by the crown's emissaries. The Founders saw the grand jury as a bulwark for the individual against arbitrary or malevolent prosecutors. Today the grand jury is more of a prosecutor's panel, but this pre-constitutional institution is still a vehicle for effective citizen participation in government, and is still a people's panel, not captive or relegated by the Constitution to a position within any branches. In the instant case, the conduct alleged thwarted the grand jury's great power.

The submission of a full brief and appendix is necessary for an Appellate Court's de novo review of the evidence submitted to the district court on the issues of conspiratorial agreement.

Pre-discovery summary judgment. Some decisions unequivocally assert that an award of summary judgment is premature if the nonmovant has not had a chance to conduct discovery.[11] In the words of the Ninth Circuit, "[g]enerally where a

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[11] See, e.g., White's Landing Fisheries, Inc. v. Buchholzer, 29 F.3d 229, 231, 29 Fed. R. Serv. 3d 802, (6th Cir. 1994) (court reverses a grant of summary judgment because the nonmovant had not been afforded an opportunity to engage in discovery); WSB-TV v. Lee, 842 F.2d 1266, 1269 (11th Cir. 1988), related reference, 125 F.R.D. 191 (N.D. Ga. 1988); Martin v. District of Columbia Metropolitan Police Dept., 812 F.2d 1425 (D.C. Cir. 1987), reh'g granted, opinion vacated in part on other grounds, 817 F.2d 144 (D.C. Cir. 1987) and opinion reinstated on reconsideration, 824 F.2d 1240 (D.C. Cir. 1987) and (overruled on other grounds by, Crawford-El v. Britton, 93 F.3d 813 (D.C. Cir. 1996)) (summary judgment improper until nonmovant has an opportunity to take discovery of facts relating to cause of action); Cowan v. J.C. Penney Co., Inc., 790 F.2d 1529, 1532 (11th Cir. 1986) (court of appeals overturns grant of summary judgment where plaintiff nonmovant had informed court of pending discovery response from movant); Sames v. Gable, 732 F.2d 49 (3d Cir. 1984) (error for trial court to grant summary judgment at a time when the plaintiff nonmovant's interrogatories still unanswered); Miller v. U.S., 710 F.2d 656, 666 (10th Cir. 1983) (discovery is strongly favored before summary judgment is granted), cert denied, 464 US 939 (1983); National Life Ins. Co. v. Solomon, 529 F.2d 59 (2d Cir. 1975) (summary judgment should not be allowed where there are issues in dispute,

party has had no previous opportunity to develop evidence and the evidence is crucial to material issues in the case, discovery should be allowed before the trial court rules on a motion for summary judgment."[12] The Sixth Circuit has reversed a grant of summary judgment because the nonmovant had not been given a chance to take discovery in a case where the Rule 56 motion was filed twelve weeks after the action commenced and two weeks after an order to stay discovery, asserting that "some discovery must be afforded the nonmovant before summary judgment is granted."[13] One district judge expressed this position quite succinctly: "[I]n general, the court should not grant summary judgment until the party opposing the motion has had an adequate opportunity to conduct discovery."[14]

The significance of the status of discovery in relation to a summary judgment motion was stressed by the Supreme Court in the landmark case of Celotex Corp v Cattrell.[15] Chief Justice Rehnquist's majority opinion noted that the defendant's motion for

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especially where one side has not had a chance to engage in discovery); Eastern Refractories Co., Inc. v. Forty Eight Insulations, Inc., 668 F. Supp. 183 (S.D.N.Y. 1987) (error to grant summary judgment for contractor in construction dispute before owner nonmovant has a chance to take discovery).

12 Program Engineering, Inc. v. Triangle Publications, Inc., 634 F.2d 1188, 1193 (9th Cir. 1980).

13 White's Landing Fisheries, Inc. v. Buchholzer, 29 F.3d 229, 231, 29 Fed. R. Serv. 3d 802, 1994 FED App. 237P (6th Cir. 1994) (reversing a grant of summary judgment over a dissent contending that nonmovant had not shown how discovery would lead to facts preventing a summary judgment grant).

14 Doe v. Mercy Health Corp. of Southeastern Pennsylvania, 150 F.R.D. 83, 84, 2 A.D.D. 97 (E.D. Pa. 1993), related reference, 1993 WL 377064 (E.D. Pa. 1993), related reference, 1993 WL 417923 (E.D. Pa. 1993), related reference, 887 F. Supp. 765, 7 A.D.D. 779 (E.D. Pa. 1994) (court denies motion for summary judgment pending further discovery by nonmovant).

15 Celotex Corp. v. Catrell, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265, 4 Fed. R. Serv. 3d 1024 (1986), on remand to, 826 F.2d 33, 8 Fed. R. Serv. 3d 656 (D.C. Cir. 1987).

summary judgment was filed one full year after commencement of the action and after discovery was conducted by the nonmovant.[16] Chief Justice Rehnquist found that these facts demonstrated that "no serious claim can be made that [nonmovant] was in any sense 'railroaded' by a premature motion for summary judgment."[17] In reaching this conclusion, Chief Justice Rehnquist focused particularly on the time the motion was filed in relation to the filing of the case and the status of completed discovery. The Court emphasized that courts should be sensitive to the status of discovery when deciding whether to rule upon a Rule 56 motion.

Courts have wisely hesitated to grant a motion for summary judgment before the nonmovant has had an adequate opportunity to complete discovery concerning the matters raised in the summary judgment motion. The concern that motions for summary judgment not be granted prematurely was articulated by the Supreme Court in Anderson v Liberty Lobby, Inc.[18] There the Court underscored the clear requirement that the nonmovant come forward with specific facts that demonstrate the existence of an issue for trial.

Petitioner requested significant discovery at the 1997 status hearing. And he apprised the district court of his discovery need for plaintiff's need for discovery to further prove defendants' participation in the conspiracy. See Plaintiff's supplemental memorandum of points & authorities in opposition to defendants' dispositive motions, July 14, 1997, n. 6 at 7-8:

> E.g., was it defendant Monroe or defendant Bransford who... investigated Mr. Foster's death in July of 1993 and reported that there was no criminal activity... reported that she [Mrs. Foster] identified the gun found in Mr. Foster's hand... [R]eported... two civilian witnesses "saw nothing unusual" in spite of the fact that they reported seeing two men in and

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16 Id. 318 ("the parties had conducted discovery").

17 Id.

18 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202, Fed. R. Serv. 3d 1041 (1986).

around the Honda...; Mr. Foster's car keys... appeared... [at] the morgue... ...Over half of the Polaroid photographs of the crime scene mysteriously vanished; the FBI lab successfully enhanced the 35 millimeter photographs... interviewed paramedic Richard Arthur but omitted in the FBI 302 Report that Arthur said that the third car in the parking vanished without its driver being identified... failed to report that he [Arthur] was 100% sure he saw a semi-automatic gun in Foster's hand.

Moreover, what possible justification will Monroe have for swearing before the United States Senate that: There were no significant irregularities in the US Park Police investigation; the FBI interviewed everyone known to be in Fort Marcy Park on July 20, 1993; the FBI had no way to match the carpet fibers found on virtually all of Mr. Foster's clothing; family members reported that Mr. Foster was deeply depressed; Mr. Foster's friends stated that he appeared distracted; and those close to Mr. Foster reported that he had lost considerable weight.

ARGUMENT 2

Where a 42 U.S.C. § 1985 (2) violation could be reasonably foreseen as a necessary or natural consequence of an overarching conspiracy to obstruct justice, a plaintiff need not name principles in the § 1985(2) violation to hold members of its overarching conspiracy liable.

Additionally, the District Court misinterpreted the law of civil conspiracy liability. The Court opined that, in order to recover for the subsidiary 42 U.S.C. § 1985(2) violation, a defendant who participated in that civil rights violation would have to be before the Court.[19] This is incorrect. Petitioner need only show that the 42

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[19] Mem. Order; Appendix K-1 at 291:

> Even if the conspiracy against the plaintiffs in Brever ultimately was tied to the fact that there was wrongdoing at the plant which defendants wanted to and agreed to cover up, the evidence of such wrongdoing itself

U.S.C. § 1985(2) violation was reasonably foreseeable to recover from any conspirator to the overarching conspiracy. See United States v. Sampol, 636 F.2d 621 (DC Cir., 1980), citing Pinkerton v. U.S., 328 U.S. at 676:

> [A] conspirator can be found guilty of a substantive offense based upon acts of his coconspirator so long as the act was done in furtherance of the conspiracy, was within the scope of the unlawful project, and could be reasonably foreseen as a necessary or natural consequence of the unlawful project... vicariously liable... even though it was not part of the original plan.

ARGUMENT 3

In holding that plaintiff had failed to fairly raise the inference of conspiratorial agreement, the district court erred by drawing all inferences against the nonmoving parties.

Inferences. In the instant case, the district court drew all inferences in defendant's favor -- some of which were, in Petitioner's view, untenable. "Reasonable" inferences are not necessarily more probable or likely than other inferences that might tilt in the moving party's favor. Instead, so long as more than one reasonable inference may be drawn and that issue creates a genuine issue of material fact, the trier of fact is entitled to decide which inference to believe and summary judgment is not appropriate. The Court is not free to base summary judgment on the findings that it made in the present case. In Poller v. Columbia Broadcasting Service, Inc. 368 U.S. 464, 7 L.Ed.2d 548, 82 S.Ct. 486, this Court observed:

> It may be that upon all the evidence a jury would be with the respondents. But we cannot say on this record that "it is quite clear what the truth is." Certainly there is no conclusive evidence supporting respondent's theory. We look at the

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would not have been sufficient. Plaintiffs in Brever and plaintiff here, must come forward with evidence that is sufficient to support an inference that the persons before the Court came to an agreement to commit a violation of § 1985(2).

> record on summary judgment in the light most favorable... and conclude that it should not have been granted. We believe that summary procedures should be granted sparingly... Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of "even handed justice."

"A court simply has no warrant to dismiss a... suit because it doubts a jury will ultimately return a verdict for the "non-moving party. McBride v. Merrell Dow and Pharmaceuticals, Inc. 800 F.2d 1208, 1212 (D.C. Cir. 1986). As the Supreme Court observed in Scheuer v. Rhodes, 416 U.S. 232, 40 L.Ed. 90, 94 S.Ct. 1683:

> The issue is not whether plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims... Moreover, it is well established that... the allegations of the complaint should be construed favorably to the pleader.

Conspiratorial agreement. The district court cited Graves v. U.S., 961 F. Supp. 314 (D.D.C. 1997) for the proposition that plaintiff had failed to sufficiently allege a "meeting of the minds." Graves held (at 321) that the proponent of a conspiracy claim "must allege with at least some degree of particularity the overt acts by defendants that were reasonably related to the promotion of the conspiracy." In the instant case, collaborative participation by 27 individuals is ample evidence to fairly raise the inference of agreement. Moreover, Petitioner's proposed Complaint sets forth with an ample "degree of particularity[20] the overt acts by defendants

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[20] Am. Comp. ¶ 1, Appendix D at 25:

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that were reasonably related to the promotion of the conspiracy." Graves id. Our case is like Chahal v. Paine Webber, Inc., 725 F.2d 20, 23 (2d Cir.1984), a 1985(2) case where the court, in reversing the district court's granting of summary judgment on the issue of conspiracy, observed that '[i]n granting summary judgment... the district judge appears to have overlooked facts supporting the claim and clear issues with respect to other material facts."

"[A]t summary judgment stage we must accept [plaintiff's] version of the facts. See Matsushita, 475 U.S. at 587, 106 S.Ct. at 1356." Here, the district court plainly did not follow the summary judgment standards of taking the evidence of the non-moving party as true, resolving all doubts against the moving party, construing all evidence in the light most favorable to the non-movant, and drawing all reasonable inferences in the non-movant's favor.[21]

The district court's view of the quantum of proof necessary to establish conspiratorial agreement is typified by its discussion of the participation of the Virginia Medical Examiner in the overall conspiracy. The court concludes that a necessary showing for conspiracy is the communication of the agreement.

> Plaintiff does not allege any "agreement" or "meeting of the minds" between these defendants and any other coconspirators, other than in completely conclusory fashion. There is no indication of how, or when, or with whom, for example, the Virginia medical examiner agreed to participate in an overall cover-up. Similarly, there is no such allegations or evidence with respect to the other newly-named defendants.[22]

Ayman Alouri & Abdel Alouri:	¶¶ 134-137
John Does No. 1 through 24:	¶¶ 106-133,138-154,171-172
Other overt acts:	¶¶ 173-175

[21] See Hunt v. Cromartie, U.S. 119 S.Ct. 1545, 1551-1552, 143 L.Ed.2d 73 (1999); Eastman Kodak Co. v. Image Techinical Servs., Inc., 504 U.S. 451, 456, 112 S.Ct. 2072, 2076, 119 L.Ed.2d 265 (1992); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986).

[22] Mem. Order; Appendix K-1 at 294.

Plaintiff's October 1998 proposed Amended Complaint, based on, and proven by a detailed review of over 10,000 pages of the government's own record in the case, is *exceptionally* fact specific. It by no means alleges defendants' wrongdoing in a "conclusory fashion."

Defendants cite no authority on conspiratorial agreement comparable to these facts – where the non-movant has met his burden of production to defeat summary judgment on conspiracy as has Petitioner in this case.

A. Defendant Alouri

Alouri is depicted as the 16th man in exhibit 2 to the court-ordered appendix to the Independent Counsel's Report on the death (page 4 above). As Alouri was stopped in a no stopping lane of 23rd street where it feeds into Washington Circle, he continuously stared at Petitioner. Alouri then drove the car very slowly onto the circle and past Petitioner while both Alouris continuously glared.

Seconds later, the car approached again from behind, and again drove slowly past as both Alouris glared at Petitioner. The car stopped about sixty feet ahead, whereupon the Alouris adjusted the car's mirrors to watch Petitioner and, as Petitioner walked in the direction of the car and observed the license plate, Alouri drove the car through a red light and sped away. Days later, Petitioner and another witness positively identified defendant Alouri.[23]

The district court ruled that, notwithstanding the fifteen individuals that preceded to two Alouris, and the ten who followed, the Alouris were, as a matter of law, not connected with these other 25 men, notwithstanding their obviously working in tandem in employing the same *modus operandi*.[24]

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23 Affidavit of Petitioner; Appendix at 229.

24 Mem. Order, Appendix K-1 at 288: "[P]laintiff is attempting to create an inference of an agreement based only on the alleged pattern of intimidation by persons he cannot show even knew one another."

The Court also dismissed the significant evidence of defendant Alouri's consciousness of guilt. Firstly, defendant Alouri had affixed his license plate NY 7534 to a different car to engage in the campaign of harassment, as pled. Secondly, in August of 1996, Alouri reported to the Virginia Department of Motor Vehicles that he had "lost" this license plate and had the Virginia Motor Vehicles issue plate number ZJG 4219 in its place.[25] (Alouri never denied this allegation of having new car license plates issued.)

Instead of viewing this evidence for the reasonable inference of Alouri's consciousness of guilt, the district court dismissed it as inconsequential: "Plaintiff's effort to allege additional facts regarding Ayman Alouri is similarly futile... as not establish[ing] any basis for a reasonable inference that Mr. Alouri knew or conspired with any other defendants."[26]

The only evidence defendant Alouri offered to rebut the allegations made against him was his Affidavit in which he denied driving a "white Honda... on October 25" -- *the date of the acts alleged is October 27.* Thus, the Affidavit is wholly irrelevant, and the district court did not address this fact. That Affidavit also recites that Alouri was "not aware" of Petitioner's grand jury subpoena or testimony, that he was "not aware" of "acts to commit a conspiracy to obstruct justice," and that he was "not aware" of "any acts to cause plaintiff emotional distress." Thus, defendant does not even deny Petitioner's allegations, but merely avers that he was unaware of their objects.

B. Defendant Monroe

There were three ways that Knowlton identified to Monroe the car that Knowlton had seen in the park on July 20, 1993: (1) selecting corresponding car color panels at the FBI laboratory, (2) comparing the car Knowlton saw to Monroe's photographs of Mr. Foster's car, and (3) describing to Monroe the car that Knowlton had seen in the park.

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25 Am. Comp. ¶¶ 136, 137; Appendix B at 70.

26 Mem. Order, Appendix K-1 at 293.

Selection of car color panels. Knowlton picked out car color panel Nos. 3499 and 3500 as the color of the car he saw – and "that color corresponded to one available only on 1983 and 1984 Hondas."[27] Thus, there was no question that Knowlton had seen a 1983 or 1984 Arkansas Honda in the park, but only Monroe knew the significance of Knowlton's information. Knowlton was unaware that when he had been in the lot at 4:30 -- Mr. Foster was already dead -- and so could not have driven to the park.[28] (Mr. Foster's car was silver 1989-year model.) But the only unequivocal information about Petitioner's identification of the car in Monroe's two reports of his interviews with Petitioner is that:

- Petitioner "identified this particular vehicle as a 1988 to 1990... Honda with Arkansas plates;" &
- Petitioner "reiterated his description of this Honda as a 1988-1990..."[29]

Court's view of car color panel selections. As to the only unequivocal information about Knowlton's identification of the car in Monroe's 302 reports, that Knowlton "identified… [it] as a 1988 to 1990...," the district court opined that "Monroe *indicated* that the car was a 1988-1990" – but did not address Knowlton's having picked car color panels corresponding only to 1983 or 1984 Hondas.[30] Monroe's reported information was false and known by Monroe to be false.

Monroe's showing Knowlton photographs of Mr. Foster's car. Knowlton's verified Complaint:

> While showing Plaintiff six or more photographs of Mr. Foster's car, MONROE questioned Plaintiff over 15 times in various ways whether the Arkansas Honda he had seen,

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27 OIC Appendix, Appendix I at 232.

28 Am. Comp. ¶ 72; Appendix B at 47.

29 Am. Comp. ¶ 60; Appendix B at 44.

30 Mem. Order; Appendix K-1 at 279.

parked in the same space as Mr. Foster's Honda was later found, could have been Mr. Foster's 1989 silver-gray colored Honda. Plaintiff repeatedly responded, "No"; that the Honda he saw was older, of a different body shape, and was rust-brown in color.[31]

Court's view of Monroe's showing Knowlton photographs of Mr. Foster's car. The Court mentioned Knowlton's repeated refusal to identify the car in the photographs as the car he had seen by quoting Monroe's report, wherein Monroe blunted the significance of Knowlton's statements by using the word "believed."[32]

Knowlton's description of the Arkansas Honda. The third way that Knowlton provided his information to Monroe regarding the car was repeatedly describing it. Over the course of two interviews, Monroe asked Petitioner in various ways -- for hours -- whether the Arkansas Honda that he had seen in the park "could" have been Mr. Foster's 1989 silver Honda. Each time, Petitioner response was the same, "no."

Undaunted, Monroe showed Knowlton the descriptions of witnesses who had purportedly described the Arkansas Honda as similar to Mr. Foster's -- newer than the one Knowlton had described, and silver-colored, not brown.[33] Monroe did not show Knowlton the reports of witnesses who had described the older brown Honda (*two of which were later ordered attached to the OIC's Report on the death*[34]). Knowlton did not cave, and Monroe was

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31 Am. Comp. ¶ 58; Appendix B at 44.

32 Mem. Order; Appendix K-1 at 280:

> The report further states that plaintiff also **believed** that the vehicle he saw was "shorter in length or more compact than the photographs of Mr. Foster's 1989 Honda and further **believed** that the color of the vehicle had a flat finish and was not glossy or clear coated as represented in the photographs of Mr. Foster's 1989 Honda." Id. Thus, it is absolutely clear upon reading the FD-302s, as dictated by Agent Monroe, that plaintiff strongly **believed**... (emphasis added)

33 Am. Comp. ¶ 71; Appendix B at 47.

34 OIC Appendix ; Appendix I at 248.

unable to write that Knowlton "said he could be mistaken," or words to that effect. So, Monroe did the next best thing — he blunted the significance of Knowlton 's account by writing that Knowlton "believed" and "recalled" that the car "appeared" not to be Mr. Foster's car.

Court's view of Knowlton's hours-long description of the car. The district court held, as a matter of law, that Monroe was merely trying to "discern whether the Honda with Arkansas license plates that Petitioner had seen could have been Mr. Foster's car."[35] Moreover, "plaintiff[s being] informed of conflicting witness statements and again shown photographs," was, in the court's view, "consistent with good police work."[36]

Other of Monroe's overt acts in furtherance of the conspiracy. Other falsified information in the reports include:

(1) Referring to the man in the blue-gray sedan, Monroe's report states that Knowlton *"could not further identify this particular individual nor his attire and stated that he would be unable to recognize him in the future."* Knowlton told Monroe just the opposite;[37]

(2) Monroe reported that Knowlton identified the blue-gray sedan as having "*Virginia license plates...*" Knowlton told Monroe that he had not seen the license plates on that car;[38] and

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35 The district court appeared to have agreed that defendants qualified immunity defense was inapplicable. See Hobson v. Wilson, 737 F.2d 1, 26, (rejecting same argument):

> In an effort to overcome the obvious, defendants focus on the trial evidence and argue that each individual act that they were shown to have committed was lawful, and that they consequently are immune. This argument seriously misconstrues the nature of the qualified immunity defense, and in particular the separate questions of law and fact.

36 Mem. Order; Appendix K-1 at 281.

37 Am. Comp. ¶ 61(1); Appendix B at 45.

38 Am. Comp. ¶ 61(2); Appendix B at 45.

(3) Regarding the contents of the rust-brown Honda, Monroe's 302 states that Knowlton "*could furnish no other descriptive data regarding the vehicle or for that matter the contents located within the vehicle,*" thus omitting that Knowlton reported seeing two wine cooler bottles on the back seat.[39]

"At the conclusion of this interview, MONROE asked plaintiff 'not to go to the press' with his story."[40] Soon thereafter, plaintiff complied, declining an on-air interview with radio talk-show host G. Gordon Liddy.[41]

On July 29, 1994, Defendant Monroe testified before the United States Senate Banking Committee, where "[t]he greater part of this testimony was false, was known by MONROE to be false, and constituted overt acts in furtherance of the cover-up."[42] That paragraph goes on to list six separate areas of defendant's perjured testimony.[43]

Court's view of other of Monroe's overt acts in furtherance of the conspiracy. The district court's memorandum order was silent on the other allegations of Monroe's having falsified reports and of Monroe's having asked Knowlton not to publicize his information. Regarding Knowlton's allegations of Monroe's having obstructed Congress,[44] the district court ignored it, holding that "[p]laintiff simply offers no evidence, other than the purported falsification of the reports, from which a reasonable juror could determine that Agent Monroe was involved in a conspiracy to obstruct justice into

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39 Am. Comp. ¶ 62; Appendix B at 45.

40 Am. Comp. ¶ 59; Appendix B at 44.

41 Am. Comp. ¶ 64; Appendix B at 45-46.

42 Am. Comp. ¶ 76; Appendix B at 49.

43 Am. Comp. ¶ 77; Appendix B at 52-55.

44 Mem. Order ; Appendix K-1 at 282.

the investigation of the death of Vincent Foster, as alleged by plaintiff."[45]

C. Defendant Bransford

"At the time of the service of the subpoena, BRANSFORD gave plaintiff his business card and said to plaintiff, 'Call me if you have any problems.'"[46] Petitioner's problems began that same day, he repeatedly called Bransford, the OIC, and the FBI, and on Friday, day two of the harassment, the OIC confirmed receipt of actual notice of the harassment.

Finally, on October 30, after the harassment subsided, defendant Bransford returned plaintiff's calls, whereupon Bransford reluctantly agreed, only at plaintiff's insistence, to call in advance of visit so plaintiff could have counsel present. That afternoon, Bransford called from the front of Petitioner's residence in violation of his agreement to call in advance, and, again, only at Petitioner's insistence, reluctantly agreed to wait 15 minutes for counsel's arrival. Again, Bransford did not honor his agreement, and arrived at Petitioner's door two-to-three minutes later. Thus, defendant de facto denied Knowlton the opportunity to have his lawyer present for defendant's contact with Knowlton. Upon his arrival in Petitioner's home, Bransford refused Knowlton's request for assistance or protection and further intimidated Knowlton.[47]

As the court observed in Hobon v. Wilson, 737 F.2d 1, 51 (D.C., 1984), law enforcement authorities' efforts to obtain information from witnesses may be improper as performed with intent to intimidate:

> In short, plaintiffs forcefully contend that it is a sham for defendants to plead that their activities were merely innocent efforts to obtain information for law enforcement

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45 Am. Comp. ¶ 104; Appendix B at 63.

46 Am. Comp. ¶¶ 106, 155, 159; Appendix B at 64, 74, 75.

47 Am. Comp. ¶¶ 156, 158, 159; Appendix B at 74-75.

> authorities... Thus, in some instances activities that might appear proper -- such as interviews of demonstrators -- are alleged to have been improper because they were performed with an intent to intimidate, not gather information. (citations omitted).

Bransford has yet to offer any possible explanation why he (1) grinned at Petitioner as if he had known exactly what Petitioner had been through, (2) repeatedly denied Petitioner his request for counsel, and (3) told Petitioner that whether Petitioner should trust him was a "good question."

Contrary to the district court's position, Petitioner's allegations against Bransford do not "stem"[48] from their two interactions. Rather, Petitioner's allegations against Bransford are based on being harassed by 26 men, punctuated at either end by the described visits by Bransford, who had been detailed first to Mr. Fiske's probe, and then to Mr. Starr's.

Court's view of Bransford's involvement. The district court ruled that Bransford's de facto denial of counsel was, as a matter of law, a result of "impatience, rudeness, or poor judgement."[49]

D. Additional defendants in proposed Amended Complaint

Petitioner's October 1998 proposed Amended Complaint, having been based on a detailed review of over 10,000 pages of the government's own record in the case, is *highly* fact specific. Not only does it not allege defendants' wrongdoing in a "conclusory fashion," but it is backed by 630 pages of exhibits selected after an 18-month review of this 10,000-page federal government record in the case.

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[48] Mem. Order ; Appendix K-1 at 282: "Plaintiffs allegations against Agent Bransford stem from two interactions..."

[49] Mem. Order; Appendix K-1 at 283.

On October 10, 1999, Petitioner submitted his 630 pages of exhibits (which had been under seal with the Special Division of the US Court of Appeals) with his *Cross-motion for entry of Partial Summary Judgment on the issue of the existence of Conspiracy.* Unfortunately, the district court had entered its dispositive order the day before, October 9, so, on October 15 Petitioner filed the 630 pages of exhibits with his Rule 59(e) motion to alter or amend.[50]

These 630 pages, proving the allegations in the October, 1998, proposed second Amended Complaint, belie the district court's conclusion that '[s]imilarly, there is no such allegations or evidence with respect to the other newly-named defendants.[51]" Petitioner makes ample showing of such participation in the conspiracy by all named defendants. And participation exceeds Petitioner's burden of production on the issue of conspiratorial agreement – it is ample circumstantial evidence agreement.

Defendants cite no authority on conspiratorial agreement comparable to these facts – where the existence of cover up, and defendants' participation in it, is clear, and where the civil rights violation was clearly committed in furtherance of that overall conspiracy.

But, in the district court's view, the existence of an overarching conspiracy to cover up the facts of the death is irrelevant as Petitioner had failed to meet its burden on his to 1985(2) claim.

> This court has already ruled, however, that such evidence is not enough to sustain this action. The Court determined that "Plaintiff has failed to offer sufficient evidence from which a reasonable juror could determine that there existed a meeting of the minds between any of the alleged conspirators," and that, [t]herefore, his claim pursuant to 1985(2) must be dismissed." [52]

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50 Order denying 59(e) motion, Appendix K-1 at 296.

51 Mem. Order; Appendix K-1 at 294.

52 Order denying 59(e) motion, Appendix K-1 at 296.

CONCLUSION

The district court held, pre-discovery, that plaintiff had not met his burden of production, and that the following were coincidences, unrelated, as a matter of law:

- Edwards seized the first photographs of the body and spilled blood to hide the neck wound.

- Beyer removed the soft palate and tongue before the police arrived to hide the entrance wound on the neck and the absence of such a wound in the mouth.

- The FBI lab concealed forensic evidence and falsified its lab reports.

- The night before Monroe's second interview of Knowlton, defendant Bicket, who had been "briefed at FBI headquarters," tire-ironed Knowlton's car – Park Police investigated & the USA refused to prosecute.

- Foster was dead by the time Knowlton saw a "1983 or 1984" "brown" Arkansas Honda. Monroe wrote that Knowlton saw a "1988-90" Honda, and told Knowlton "not to go to the press." Knowlton complied. Six witnesses corroborate Knowlton's account that Mr. Foster's 1989 gray Honda was not in the lot – when Mr. Foster was already dead.

- Evans-Pritchard's . Oct. 22, 1995 Telegraph article: [H]is statements have been falsified... "That's an outright lie... They went over it about 20 times, telling me that this was Foster's car..." Starr's investigators have never talked to Knowlton. The federal grand jury has never summoned him to give sworn testimony...

- The same day the Telegraph appeared in the U.S., the OIC prepared Knowlton's grand jury subpoena..

- The day that the FBI served the subpoena was the same day that the harassment started.

- 25 or more men came together and each intimidated Knowlton, and discredited him. Experts identify this technique as being used by the government to intimidate a witness, or alternatively to discredit a witness.

- Defendant Alouri, depicted as the 16th of 27 men above (p. 4), affixed his plates to another's car, followed Knowlton by car, sped through a red light as the plates were being read, and when later identified, expressed surprise that "it" concerned Foster. Then he replaced the plates, telling DMV that he had "lost" them.

- The OIC/FBI failed to respond to Knowlton's pleas for help until after the intimidation subsided.

- The 1985(2) intimidation by 25 or more men was punctuated at either end by visits by Bransford. In his first visit, Bransford told Knowlton to "call if you have any problems." In the second, Bransford said that whether Knowlton should trust him was "a good question," and that he had worked for Fiske where he investigated the death with defendant Monroe.

- The OIC asked Knowlton before the panel, "Did he [the man in the park] touch your genitals?" – this and other questions discredited Knowlton before the grand jury.

Collaborative participation of 27 individuals, even standing alone, is ample evidence to fairly raise the inference of agreement.

Petitioner is entitled to brief the record in this case, for Appellate de novo review of his burden of production on the issues of whether he failed to meet his burden, pre-discovery, as a matter of law, on five issues:

- The existence of the section 1985(2) violation
- Defendant Alouri's participation in that civil rights

violation

- The existence of the overarching conspiracy
- The section 1985 violation being subsidiary to the overarching conspiracy
- Eight other defendants' participation in the overarching conspiracy

A motion for summary affirmance is appropriate only where the party can readily demonstrate that the appeal raises no substantial question. Petitioner's case is based on a statute that is designed to protect the integrity and sanctity of the federal court process and his cause involves issues of extraordinary importance to the public.

Respectfully submitted,

/S/_____

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